

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ROBERT R. BENNIE, JR., individually,)	CASE NO. 4:11-CV-03089
and on behalf of BOB BENNIE)	
WEALTH MANAGEMENT, INC.)	
)	
Plaintiff,)	
)	
vs.)	
)	MOTION TO DISMISS
JOHN MUNN, in his official and)	AMENDED COMPLAINT
individual capacity, JACK E.)	
HERSTEIN, in his official and)	
individual capacity, RODNEY R.)	
GRIESS, in his official and individual)	
capacity, and JACKIE L. WALTER, in)	
her official and individual capacity,)	
)	
Defendants.)	

COME NOW the Defendants, John Munn ("Munn"), Jack E. Herstein ("Herstein"), Rodney R. Griess ("Griess") and Jackie L. Walter ("Walter"), in their official and individual capacities, and pursuant to Fed. R. Civ. P. 12(b)(6) and 12(b)(1) and move to dismiss the Plaintiff's Amended Complaint (Filing No. 26) for the reasons it fails to state a claim upon which relief may be granted and the Court lacks subject matter jurisdiction over some of Plaintiff's claims. In support of their Motion, Defendants show as follows:

1. Plaintiff's allegations that Herstein deprived Bennie of his constitutional rights fail to state a claim under Section 1983.
2. Plaintiff's allegations that Walter deprived Bennie of his constitutional rights fail to state a claim under Section 1983.
3. Plaintiff's allegations against Munn, other than the allegations relating to the Orders, fail to state a claim under Section 1983.

4. Plaintiff's Due Process Claims (Claims I and IV) fail to state a claim against all Defendants because Plaintiff failed to allege facts establishing that Defendants denied Plaintiff a constitutionally protected property or liberty interest and because Plaintiff failed to exhaust his state remedies by requesting a hearing.

5. All claims Plaintiff asserts on behalf of Bob Bennie Wealth Management, Inc., fail to state a claim upon which relief may be granted, and Bob Bennie, lacks standing to assert the constitutional claims of Bob Bennie Wealth Management, Inc. under Fed. R. Civ. P. 12(b)(1).

6. Plaintiff's allegations against Defendants Walter, Herstein and Griess relating to the Orders fail to state a claim because Walter, Herstein and Griess did not sign or issue the orders.

WHEREFORE, Defendants pray that the Plaintiff's claims identified above be dismissed.

Dated this 16th day of September, 2011.

JOHN MUNN, JACKIE E. HERSTEIN,
RODNEY R. GRIESS and JACKIE L.
WALTER, Defendants

By: /s/ Timothy J. Thalken
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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

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/s/ Timothy J. Thalken

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